IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8900 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JAYESH HIRALAL THAKKAR

Versus

STATE OF GUJARAT

Appearance:

MR THAKKAR for MS SUMAN PAHWA for Petitioner

MR KT DAVE, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 23/03/2000

ORAL JUDGEMENT

#. Commissioner of Police, Baroda City, Baroda, passed an order on October 17, 1999, in exercise of powers under Section 3(2) of the Gujarat Prevention of Anti-Social Activities, 1985 ("PASA Act" for short), detaining the petitioner-detenue under the provisions of the PASA Act.

#. The detaining authority considered 5 offences registered against the detenue. The authority also considered the statements of three anonymous witnesses and came to a conclusion that the detenue is a "dangerous person" and he is required to be immediately prevented from pursuing his activities which are detrimental to public order. The detaining authority exercised owners under section 9 (2) of the PASA At in respect of the witnesses after recording satisfaction about the need for exercise of these powers in public interest. The authority considered possibility of resorting to less drastic remedy and came to a conclusion that it is not possible to resort to these remedies as the petitioner is required to be immediately prevented for pursuing his illegal and anti-social activities and therefore, the detention under the PASA Act is the only efficacious remedy that can be resorted to.

#. The petitioner has challenged the order of detention on various grounds. However, Mr. Thakkar, appearing for Ms. Suman Pahwa, learned advocate for the petitioner has restricted his argument to the ground of delay in passing the order. He submitted that the statements of anonymous witnesses which have been relied upon by the detaining authority while passing the order were recorded on 3rd September, 1999, 5th September, 1999 and 11th September, 1999. All the statements have been verified by the detaining authority on September 20, 1999 and the order is passed on October 17, 1999, i.e. after about 27 days. This delay would indicate that the satisfaction for the need for detaining the detenue under the PASA Act for immediately preventing him from pursuing his illegal and anti-social activities is not genuine and therefore, the order of detention would be vitiated. Mr. Thakkar submitted that the petition, therefore, may be allowed.

#. Mr. K.T.Dave, learned AGP has opposed this petition.

#. A perusal of the compilation of papers tendered to the Court, which was supplied to the detenue while serving the grounds of detention indicates that the order was passed on October 17, 1999. The statements of witnesses in respect of whom, privilege is claimed were verified on September 20, 1999. After September 20, 1999, there is no development except passing of the order. The lapse of about 27 days in passing the order would lead to necessary inference about the satisfaction for urgent need for passing the order under the PASA Act for immediately preventing the detenue from pursuing his

activities to be not genuine. This would vitiate the order of detention. The delay of 27 days in passing the order is not explained by the detaining authority and therefore, the petition deserves tobe allowed on account of order of detention being vitiated for want of genuine subjective satisfaction for the need for passing such order.

#. In view of the aforesaid discussion, the petition is allowed. Impugned order of detention dated October 17, 1999 is hereby quashed and set aside. The detenue - Jayesh Hiralal Thakkar is ordered to be set at liberty forthwith, if not required in any other matter. Rule made absolute with no order as to costs.

[A.L. DAVE, J.]

*****

pirzada/-